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No. 736

In the Supreme Court of the United States

OCTOBER TERM, 1957

TRUCK DRIVERS AND HELPERS LOCAL UNION 728 (Formerly LOCAL UNION 859) OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

On Petition for a Writ of Certiorari To the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The final opinion of the court below (Pet. 13-18) is reported at 249 F. 2d 512. Its prior opinion remanding the case to the Board for further consideration (R. 18-27) is reported at 229 F. 2d 514. The Board's original findings of fact, conclusions of law and order (R. 1-8) are reported at 110 NLRB 2192. Its supplemental decision, findings of fact, conclusions of law and order upon remand (R. 28-34) are reported at 116 NLRB 1020.

JURISDICTION

The judgment of the court below (R. 50) was entered on October 28, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether substantial evidence supports the Board's finding that, in the circumstances of this case, the Union, by picketing various construction projects where employees of both the employer involved in a labor dispute with the Union and secondary employers were present, induced and encouraged the employees of the latter to engage in work stoppages in violation of Section 8(b)(4)(A) of the National Labor Relations Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are as follows:

> Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8. . . . (b) It shall be an unfair labor practice for a labor organization or its agents—

* * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . . .

* * * *

Sec. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

STATEMENT

A. *The Board's findings of fact.* The Board found that petitioner Union violated Section 8(b)(4)(A) of the Act when, in furtherance of a strike against Campbell Coal Company, it extended its picketing to construction projects of Campbell's customers. The evidentiary facts upon which the Board based its findings are set forth in a stipulation (R. 11-17) and may be summarized as follows:

Campbell Coal Company sells ready-mixed concrete and operates two plants in Atlanta, Georgia, from which its drivers deliver its product to construction sites. At these sites the truck drivers, at the direction of the contractors, unload the ready-mix into designated receptacles. The drivers spend approximately 25 percent of their working time at their employer's plants, 25 percent en route, and 50 percent at construction sites.

In June 1954, because of the discharge of a number of the truck drivers, the Union called a strike against Campbell Coal and picketed the two ready-mix plants. The pickets also followed trucks delivering ready-mix to various construction projects where the Union had no dispute with any of the contractors. The pickets carried signs which read:

> Employees of Campbell Coal Company on strike in protest of discharges against Union employees. Sales Drivers, Helpers and Building Construction Drivers, Local 859, AFL.

At each construction site the Union's agent advised the contractor or his representative of the dispute with Campbell Coal and asked him not to accept delivery of the concrete. If delivery was refused the Union took no further action. If accepted, however, the Union's agents picketed the immediate area of the trucks. The picketing continued so long as Campbell Coal's trucks remained on the construction site. In some instances employees of the contractors working on the construction projects quit work for the duration of the picketing, assigning as their reason the presence of the picket signs. The Union agents did

not inform employees who quit or other employees on the projects that the picketing was not intended as an appeal to them not to work.

B. *The Board's decision in the original proceeding.* The Board concluded that the Union, by picketing at the construction projects where secondary employers were located, induced and encouraged the latter's employees to strike, with an object of forcing their employers to cease doing business with Campbell Coal, thereby violating Section 8(b)(4)(A) of the Act. The Board based its finding of an illegal object upon the fact that since Campbell Coal, the employer involved in the labor dispute with the Union, had permanent places of business which could be and were being picketed by the Union, the extension of the picket line to the construction projects where secondary employers were engaged in work, necessarily was directed at the latter's employees for the purpose of inducing work stoppages by the latter's employees in violation of Section 8(b)(4)(A).[1]

C. *The decision of the court below in the original proceeding.* The court below in its initial opinion (R. 18) rejected, as too rigid and incompatible with the statute, the Board's ruling that where the separate premises of the primary employer afford the union an adequate opportunity for picketing, exten-

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[1] The Board viewed the case as governed by its previous rulings in *Washington Coca Cola Bottling Works, Inc.*, 107 NLRB 299, enforced *sub nom. Brewery and Beverage Drivers* v. *National Labor Relations Board*, 220 F. 2d 380 (C.A. D.C.), and *Thurston Motor Lines, Inc.*, 110 NLRB 748.

sion of the picket line to a site where secondary employers are also present constitutes, without more, a violation of Section 8(b)(4)(A). In the court's view, the "existence of a common site," the fact that picketing there would necessarily affect "employees of another," and the existence "of another place which can be picketed, are factors to be considered in determining whether or not the section has been violated, but alone are not conclusive." (R. 24)

Accordingly, the court, noting that the record before the Board contained "some additional facts" which were "not the subject of findings by the Board," remanded "the case to the Board for its further consideration, if desired" consistent with the views of the court (R. 20, n. 2, 27).

D. *The Board's decision and order after remand.* The Board, after considering the entire record in the case, concluded, as before, that the Union's picketing at the construction projects was aimed at the employees of the neutral employers, in violation of Section 8(b)(4)(A) of the Act. In so finding, the Board took into account not only the fact that the Union could have effectively picketed Campbell Coal at its own plants, but also the further circumstances (R. 31-32) that:

> Unable to cause a cessation of business between certain neutral contractors and the primary employer by direct appeals to the former, the Respondent [the Union] sought to accomplish that objective through a picket line appeal to employees of the secondary employers. Only those employers who refused to accede to the Respondent's demands that they cease doing business

> with Campbell Coal were picketed. When employees of these employers ceased working as a direct result of the picketing the picket line had accomplished the Respondent's previously revealed objective of putting pressure on neutral employers to force them to cease doing business with the primary employer. No attempt was made by the Respondent to inform striking employees that the picket line was aimed at Campbell Coal and not at the employees of neutral contractors.

The Board's order requires the Union to cease and desist from the unfair labor practices, and to post appropriate notices (R. 32).

E. *The decision of the court below in the proceedings after remand.* The court below, Judge Bazelon dissenting, concluded that the record considered as a whole furnished adequate evidentiary support for the Board's findings and that hence there was no basis for "repudiating the judgment of the Board that an object of the picketing * * * was within the proscription of section 8(b)(4)(A)" (Pet. 16). Accordingly, the court enforced the Board's order (Pet. 17).

ARGUMENT

The heart of petitioner's case is that the Board's finding that the Union engaged in conduct proscribed by Section 8(b)(4)(A) is without adequate evidentiary support in the record.[2] Section 8(b)(4)(A),

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[2] It may be noted that, contrary to petitioner's suggestion (Pet. 2) that Board findings must be supported by "clear and convincing evidence," the statute provides that such findings are entitled to acceptance by a reviewing court if

as this Court has recognized, represents a practical compromise between "the dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 692. When a labor organization, engaged in a labor dispute with one employer (here Campbell Coal), pickets at a site where both the primary employer and secondary employers are present, and doing business with each other, the problem, for purposes of Section 8(b)(4)(A), is whether the immediate target of the picketing is the primary employer or the secondary, neutral employer. If the latter, the picketing is in violation of the Act. The issue thus presented, as the courts of appeals have uniformly held, is essentially one of fact to be determined from all the surrounding circumstances.[3] The resolu-

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supported by "substantial evidence on the record considered as a whole." Sec. 10(e).

[3] *National Labor Relations Board* v. *Business Machine and Office Appliance Mechanics, etc.*, 228 F. 2d 553 (C.A. 2), certiorari denied, 351 U.S. 962; *National Labor Relations Board* v. *Associated Musicians*, 226 F. 2d 900 (C.A. 2), certiorari denied, 351 U.S. 962; *National Labor Relations Board* v. *Truck Drivers & Helpers Local Union No. 728*, 228 F. 2d 791, 795 (C.A. 5); *National Labor Relations Board* v. *General Drivers, etc.*, 225 F. 2d 205 (C.A. 5), certiorari denied, 350 U.S. 914; *National Labor Relations Board* v. *General Drivers, etc.*, decided January 23, 1958 (C.A. 6); *Sales Drivers, Helpers & Building Construction Drivers, Local 859* v. *National Labor Relations Board*, 229 F. 2d 514 (C.A.D.C.), certiorari denied, 351 U.S. 972.

tion of this issue in the instant case adversely to petitioner presents no question worthy of further review by this Court.

Petitioner contends, however (Pet. 9), that the Board's finding of an illegal object on the part of the Union in picketing the construction projects is erroneous because the Board coupled "two separate activities of the Union each of them legal in itself to produce an alleged illegal purpose." The argument is that the Board relied solely on the Union's appeals to the secondary employers to refuse to accept deliveries from Campbell Coal which the Act does not outlaw, and also on the Union's picketing at the site where both Campbell Coal and the secondary employers were present which in and of itself is not necessarily unlawful. The argument is insubstantial. These two factors, as the Board's decision and the opinion below make clear (R. 30-32; Pet. 15), were only a part of "the combination of circumstances * * * considered by the Board in determining that an object of the picketing came within the object condemned by the secondary boycott section of the statute" (Pet. 16). In addition, even though the Act does not proscribe union appeals to an employer to refrain from doing business with another, as distinguished from inducement of his employees, it has been recognized that such appeals as the Union addressed to the secondary employers here may be used as evidence of the illegal object defined in Section 8(b)(4)(A).[4]

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[4] *National Labor Relations Board* v. *Denver Bldg. & Construction Trades Council*, 193 F. 2d 421, 423-424 (C.A. 10); *National Labor Relations Board* v. *Local Union No. 55*, 218

Likewise, the fact that the Union picketed at the common site where secondary employers were present, plainly was a factor to be taken into account in determining whether, in the circumstances, the immediate targets of the picketing at the construction site were the neutral employers rather than Campbell Coal, particularly in view of the fact that the Union could have effectively picketed Campbell Coal at its principal places of business.

The cases cited by petitioner (Pet. 10-11) turn upon their particular facts and present no conflict in principle with the ruling below. Indeed, in originally remanding this case to the Board for further consideration, the court below adopted as its own (R. 25) the controlling principle enunciated in *National Labor Relations Board* v. *General Drivers, etc.*, 225 F. 2d 205 (C.A. 5), certiorari denied, 350 U.S. 914, one of the cases which petitioner cites (Pet. 10) as being in conflict with the holding below.

F. 2d 226, 231 (C.A. 10); *National Labor Relations Board* v. *Associated Musicians*, 226 F. 2d 900, 904 (C.A. 2), certiorari denied, 351 U.S. 962.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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